IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8926 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SAMIR NAVAB PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR UR BHATT ADDL.GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/02/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner who is the detenue, calls in question the legality and validity of the detention order, passed by the Commissioner of Police, Ahmedabad City on 26th September, 1997 invoking powers under Sec.3(2) of the Prevention of Anti-Social Activities Act (for short "the Act "); consequent upon

which the petitioner came to be arrested and at present is under detention.

2. In order to appreciate the rival contention, necessary facts in brief may be stated. Against the petitioner, complaints for the offence of theft and trespass, came to be lodged with Ghatlodiya and Setllite Police Stations, alleging that the petitioner committed the theft of Car Tapes, Cycles, Ornaments, Cassettes and Speakers, committing trespass, and thereby he was terrorising the people and making the people panicky. The Commissioner of Police, having come to know about such complaints made detailed inquiry and after inquisition, he could note that the petitioner was a head-strong person and by his subversive activities, he was disturbing the public order and terrorising the people. After inquisition, the Police Commissioner also found that the petitioner was a head-strong person i.e. a tartar & decimator and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order and spreading pandemonium were going berserk. No one was, therefore, ready to come forward and state against him. After a great persuation and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After a deep inquiry, the Police Commissioner found that to curb the anti-social, subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested and at present, is in custody.

3. On behalf of the petitioner, challenging the impugned order, it is submitted that the order in question is passed after a great delay, as a result, the continuous detention has been rendered illegal. There was no justification for the authority passing the detention order withholding opportunity, exercising the privilege under Sec.9(2) of the Act. The detaining authority ought to have disclosed the particulars of the witnesses whose statements were recorded in support of the order passed. No doubt, under Section 9 of the Act, the authority has the privilege, but that is to be

exercised judiciously, and not arbitrarily or capriciously so as to deprive the detinue of his right to have effective representation. As the particulars were not given, the petitioner was deprived of his right to have the effective representation against the order. The instances about the offences noted in the order were not sufficient to brand him a dangerous person or to form a reasonable belief that maintenance of public order was adversely affected. The statements recorded are vague and necessary particulars when wanting the order is bad in law and is liable to be quashed.

4. Mr.U.R.Bhatt, the learned APP has vehemently refuted the allegations made, submitting that there is no delay on the part of the authority passing the order of detention, promptly order was passed and in the public interest, the certain facts & particulars are withheld. As both later on confined to the only point, I will not dwell upon other points.

5. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-discosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or

fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others- 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel Vs. State of Gujrat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

6. In view of such law, the authority passing the detention order has to satisfy the court that it was absolutely necessary in the public interest to suppress the particulars about witnesses keeping their safety in mind. No doubt, Mr. P.G.J.Namputhiri, Commissioner of Police, has filed his affidavit explaining the circumstances which led him to exercise the discretion available under Sec.9(2) of the Act, but the affidavit is vague and is not specific on the point. He has stated that he considered all the materials and considered other registered and unregistered offences committed by the detinue and then was subjectively and independently satisfied with the fear expressed by the witnesses

against disclosure of their names, addresses and occupation to the petitioner, was not illbased but it required anxious consideration and to safe-guard their safety, the particulars about witnesses were suppressed. Such vague statement is not sufficient. He ought to have stated in the affidavit or annexing list of documents with the affidavit, what materials he considered and whether he inquired from the witnesses or about the witnesses. Unless that is made clear, it is difficult to know whether he considered those materials, the copies of which have been supplied to the detenu; or the other materials kept away from the detinue and when specific detailed affidavit is not filed and vague explanation is offered, the same cannot be accepted and it must be held that without any application of mind, mechanically report made by the subordinates was accepted by the authority passing the detention order which is not in consonance with law. With the result, the detention cannot be held legal and maintainable.

7. On another ground also, the detention order is not tenable at law. It is made crystal clear by the Appex Court in the case of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and others, AIR 1994 SC 656 that if the detention order is passed after a long delay from the last offence registered or the statements of the witnesses recorded, the order of detention on the ground of delay, is required to be set aside. In the case before Supreme Court, about five months and eight days after the last registration of the offence and four months from the statement which came to be recorded, the detention order was passed, and so on the ground of delay, that detention order was quashed and the detinue was ordered to be set at liberty. In the case on hand, as per the statement before me, the last complaint came to be registered on 13th October, 1996 and thereafter impugned order came to be passed on 19th July, 1997. The order is, therefore, passed about nine months after the last complaint came to be recorded. When there is a delay of nine months, in view of the aforesaid decision of the Supreme Court in Pardeep Nilkanth Paturkar (supra), the impugned order cannot be maintained, being arbitrary & illegal.

7. For the aforesaid reasons, this petition is allowed. The order of detention passed on 26st September, 1997 by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forth with, if not required in any other case. Rule accordingly made absolute.

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